

Mr. Chairman and members of the Committee, my name is Walter Van Deren. V A N space D E R E N. I am here to oppose Senate Bill 407 on behalf of myself and also for our family's ranch in Dillon, the Open A Ranch.

As you may know, there is ongoing litigation involving the SB 407 code sections by both the proponents and opponents. We, Open A Ranch, have appeared at the Dillon court confirmation and alleged the Bureau of Reclamation contract is illegal because it adds about 12,000 acres more than the Congressional authorization. The sections are also part of an appeal to the Montana Supreme Court regarding a motion to combine the Dillon contract confirmation case and the Virginia City cases. The Virginia City case asks the Court to approve the irrigation of out-of-district lands.

This hearing on SB 407 is a surprise to me. I testified at the Senate SB 407 hearing on February 17th and then attended the vote where SB 407 died in committee on the 19th. I have attached a copy of the minutes, with that vote, to the written copy of my testimony.

It is my understanding that SB 407 was "blasted" out of the Senate Committee to get here today. I do not know why SB 407 is deserving of or requires such extraordinary and urgent measures.

The existing law, MCA 85-7-1957, seems to me to be a reasonable and prudent requirement that protects the State of Montana, the irrigation districts and neighbors. The existing law, requiring court confirmation of reclamation contracts, predates the Bureau of Reclamation projects in Montana. It simply requires Bureau of Reclamation water contract to be legal and valid under Montana law.

In the Dillon project, this meant that 40 years ago, there was a one (1) day hearing where the local district court reviewed the validity and legality of the Bureau of Reclamation contracts.

It took the Bureau of Reclamation about four (4) years, start to finish, to conduct the contract renegotiation process with the Dillon irrigators. With our objections, the lawyers expect the court confirmation hearing for the new contract to take about two (2) days.

I believe the Bureau of Reclamation finished the Dillon contract renewal process by amending the new contract to allow the delivery of water prior to court confirmation. Let me say that again, in Dillon, the Bureau of Reclamation changed the contracts to allow water deliveries prior to completion of the court confirmation process.

Additionally, the Bureau of Reclamation finalized the Dillon contracts in late 2006 with a court confirmation hearing in December 2006. The maps specifying the acres that may be irrigated under the new contracts are to be completed by December 31, 2009, three (3) years after the requested court confirmation date.

I have listened to the proponents' testimony and understand it that the only necessary function of a Montana court confirmation of water contracts is to ensure that the interests of the Bureau of Reclamation are fully protected.

Even I can identify important interests to protect other than Bureau of Reclamation's.

I obviously believe that the State serves a necessary function standing between irrigators near projects, like myself, and the Bureau of Reclamation. SB 407 puts the State in the extraordinary role of protecting the Bureau of Reclamation and the 200 or so irrigators in the project from me.

Having attended years of various board, joint, technical and negotiating meetings between the Bureau of Reclamation and the local irrigators, I also believe it a necessary function of the State to protect the interests of local district irrigators from the uneven bargaining position and experience of the Bureau of Reclamation.

Bureau of Reclamation contracts have a negotiable section, and towards the end a non-negotiable section titled, "Standard Contract Articles". The first article under this section states:

[The negotiable sections] of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one party shall be considered to have drafted the stated articles.

Early in the Dillon negotiations, the local irrigation districts wondered if the renewal was a "contract of adhesion". With this clause, the Bureau of Reclamation waives the districts' right to have a contract interpreted in a manner giving any advantage to the districts.

Article 9, section 3 of the Montana Constitution identifies the important interests of the State of Montana that are protected by local court confirmation of Bureau of Reclamation water contracts. The U.S. Congress recognized and affirmed Montana's interest in State waters with the McCarran amendment. SB 407 starts the process of turning over control and oversight of State waters to the Bureau of Reclamation.

Finally, the proponents have indicated that SB 407 has been amended to exclude the existing Open A litigation. My lawyers indicate SB 407 does not prevent the current court confirmation in Dillon from being withdrawn and re-filed in November 2009 as a "new" proceeding or cause of action.

I appreciate your time and consideration and urge you to vote "no" on SB 407.

Sincerely,



Walter Van Deren
Open A Ranch, Inc.
PO Box 952
Dillon, MT 59725
(406) 683-6632
wvanderen@bmt.net

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05:03:09 Sen. Jackson
05:05:09 Sen. Brown

05:06:06 Vote: Motion failed 4-5 by roll call vote with Sen.
Brown, Sen. Jackson, Sen. Ripley, and Sen. Steinbeisser
voting aye.

Additional Discussion:

05:07:07 Sen. Brown

05:08:53 Motion/Vote: Sen. Ripley moved that **SB 478 BE TABLED**.
Motion carried 9-1 by roll call vote with Sen. Jackson
voting no.

EXECUTIVE ACTION ON SB 407

05:12:45 Motion: Sen. Ripley moved that **SB 407 DO PASS**.

05:13:07 Motion: Sen. Ripley moved that **SB 407 BE AMENDED**.
EXHIBIT(ags39a18)

Discussion: None

05:13:56 Vote: Motion carried unanimously by voice vote.

05:14:39 Motion: Sen. Ripley moved that **SB 407 BE AMENDED**.
EXHIBIT(ags39a19)

Discussion:

05:16:14 Sen. Murphy

Without objection:

05:16:26 Bertha Lund
05:16:57 Sen. Hamlett

05:17:45 Vote: Motion carried 7-2 by voice vote with Sen.
Hamlett and Sen. Larsen voting no.

Discussion:

05:18:40 Sen. Hamlett
05:18:53 Sen. Brown
EXHIBIT(ags39a20)

05:21:30 Sen. Jackson
05:21:35 Sen. Ripley

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05:23:17 Sen. Murphy
05:24:15 Sen. Larsen
05:25:08 Chairman Steinbeisser
05:25:37 Sen. Brown
05:26:21 Sen. Ripley
05:26:59 Sen. Jackson
05:28:11 Sen. Murphy
05:28:26 Sue O'Connell, LSD
05:29:18 Sen. Murphy
05:29:41 Sen. Ripley
05:30:16 Sen. Hamlett
05:30:28 Sen. Brown

Without objection:

05:30:38 Ms. Lund
05:31:04 Sen. Brown
05:31:14 Sen. Ripley
05:31:52 Sen. Brown
05:32:06 Sen. Hamlett
05:32:30 Sen. Ripley

Without Objection:

05:32:51 Sen. Ripley
05:33:01 Ms. Lund
05:33:28 Sen. Larsen
05:33:55 Sen. Ripley
05:34:24 Sen. Hamlett
05:34:45 Chairman Steinbeisser

05:34:55 **Vote:** Motion failed 4-5 by roll call vote with Sen.
Brown, Sen. Jackson, Sen. Ripley, and Sen. Steinbeisser
voting aye.

EXECUTIVE ACTION ON SB 286

05:36:45 **Motion:** Sen. Brown moved that SB 286 DO PASS.

05:38:23 **Motion:** Sen. Brown moved that SB 286 BE AMENDED.

EXHIBIT(ags39a21)

Discussion:

05:39:36 Sen. Brown
05:42:16 George Harris, Administrator, Department of Livestock
05:44:14 Sen. Brown
05:44:55 Sue O'Connell, LSD
05:46:05 Sen. Brown

March 25, 2009

Chairman and Committee Members
House Agriculture Committee
Montana House of Representatives
PO Box 200400
Helena, MT 59620

Dear Committee Members,

I am writing to ask you to vote against Senate Bill 407, a bill revising district court confirmation of federal water contracts. I believe existing law is reasonable and necessary in authorizing local courts to review the Bureau of Reclamation water contracts to determine if they are legal contracts under state law and consistent with Montana water law.

For further information, Please refer to my Son, Robert Van Deren's letter of March 4, 2009 as I concur with all of his comments.

I appreciate your consideration of my comments on Senate Bill 407 and urge a "no" vote.

Sincerely,



Patricia Van Deren
PO BOX 952
Dillon, MT 59725
(406)683-2515